STATE OF MICHIGAN

COURT OF APPEALS

GILBERT T. MONROY,

Plaintiff-Appellant,

V

CLARENCE SWEEN and LILLIAN SWEEN,

Defendants-Appellees.

UNPUBLISHED
April 7, 2005

No. 251544
Calhoun Circuit Court
LC No. 03-000310-NO

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff rented a residence that was owned and managed by defendants. He allegedly slipped "on a defective loose board threshold and fell after the threshold in the front steps of said residence collapsed." He brought this premises liability action against defendants. They argued that plaintiff knew that the threshold wiggled, that they had no duty to warn plaintiff of what he already knew, and did not have a duty to protect where they had no reason to anticipate that there was any unreasonable risk involving the threshold. The trial court held that plaintiff was aware of the defect that led to the injury and granted summary disposition for defendants pursuant to MCR 2.116(C)(10). Plaintiff appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first argues that the trial court erred in applying the open and obvious doctrine because that doctrine is not available to deny liability when the premises owner violated the statutory duty to maintain the premises in reasonable repair pursuant to MCL 554.139(1). See *O'Donnell v Garasic*, 259 Mich App 569; 676 NW2d 213 (2003); see also *Woodbury v Brucker*, 467 Mich 922; 658 NW2d 482 (2002). However, plaintiff did not allege in his complaint that defendants violated the statutory duties imposed by MCL 554.139(1), nor did he present any argument based on that statute in response to defendants' motion for summary disposition. Rather, he raises this issue for the first time on appeal. Because he failed to preserve the issue below, we decline to address it. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Plaintiff also argues that there was a question of fact whether the condition of the threshold was open and obvious. Plaintiff asserts that, while he "may have known that the threshold was a little loose, he had no indication that it would collapse as it did on the date of the incident. . . . In other words, he may have realized a defective condition, but he had no idea of the defective condition that eventually caused his injuries."

Invitors are not absolute insurers of the safety of their invitees. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995) (citation omitted). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001) (citation omitted). "'[W]here the dangers are *known to the invitee* or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee.'" *Id.*, quoting *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992) (emphasis added).

In this case, plaintiff was aware that the threshold was unstable. The danger posed by an unstable threshold is that its instability may cause an individual to fall. Thus, plaintiff was aware of the condition and the hazard it posed. Plaintiff asks this Court to hold that defendants had a duty to protect and warn him because the "collapse" of the threshold was unexpected. We disagree. Plaintiff knew the "particular risk" at issue here, i.e., that the loose threshold would move. Cf. *Hughes v PMG Building, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997) (distinguishing the danger of falling off a roof overhang from the "particular risk" that the overhang would collapse if stepped upon.)

Lastly, plaintiff argues that even if this Court deems the hazard open and obvious, there were "special aspects" that made it unreasonably dangerous,.

Pursuant to *Lugo, supra*, at 517, if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the landowner has a duty to undertake reasonable precautions to protect his invitees. But "only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Lugo, supra* at 519. The *Lugo* Court provided two examples illustrating when a condition could be considered unavoidable or unreasonably dangerous: (1) when the floor of a commercial building with a single exit is covered with water, the open and obvious doctrine would not apply because the condition would be essentially unavoidable; (2) when an unguarded thirty-foot hole exists in the middle of a parking lot, the open and obvious doctrine would not bar liability because the situation "would present such a substantial risk of death or severe injury to one who fell in the pit that it would be unreasonably dangerous to maintain the condition, at least absent reasonable warnings or other remedial measures being taken." *Lugo, supra*. at 518-519.

Contrary to plaintiff's argument, this case does not involve "special aspects" as explained in *Lugo, supra.* Plaintiff suggests that there were special aspects in this case because the nature of his injury (a ruptured Achilles tendon) shows that the condition created an unreasonable likelihood of severe harm. We disagree. The likelihood of severe harm from a loose threshold is not akin to that posed by a thirty-foot pit. Plaintiff argues that another special aspect is that there was no indication that the threshold would give way. This argument does not concern a "special aspect" within the meaning of *Lugo*. It does not support the view that there was a "uniquely high likelihood of harm or severe harm if the risk is not avoided." *Lugo, supra* at 519.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder